

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20812 OF 2006

13.10.2006

Between:

C.Veerappa, S/o.Venkataiah

... Petitioner

AND

The Commissioner, Land Acquisition, Hyderabad

And another

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20812 OF 2006

ORDER:

The petitioner herein filed the instant writ petition challenging the order dated 04.4.2006 passed by the first respondent herein in exercise of powers under Section 33 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act, for brevity), as illegal, arbitrary and violative of the provisions of the Act.

The brief fact of the matter is as follows. The petitioner was the owner of huge extents of lands in survey Nos.55, 56, 58, 59, 60 and 76 situated at Kothapet Village of Uppal Mandal in Ranga Reddy District. As the land falls with Hyderabad Urban Agglomeration, the petitioner filed a declaration under Section 6 of the Act before the second respondent. After processing the same, the petitioner was declared to be the holder of surplus vacant land to the extent of 20,954.07 Sq.mts. duly allowing 1,000 Sq.mts. under Section 4(1)(b) of the Act and another extent of 20,234.30 Sq.mts, as per the orders of the Government in G.O.Ms.No.733, dated 31.10.1998, as the land falls within the peripheral area of Hyderabad Urban Agglomeration. The final orders under Section 8(4) and 9 of the Act were issued by the second respondent on 30.4.1994 ordering further steps as per the Act.

The petitioner filed appeal before the first respondent against the proceedings of the second respondent. He contended *inter alia* that the petitioner did not receive draft statement under Section 8(1) and notice under Section 8(3) of the Act and, therefore, the final order/statement issued by the second respondent on 30.4.1994 is illegal and unsustainable. The plea was not accepted by the first respondent. He observed that there is evidence to show that the draft statement under Section 8(1) of the Act was served on the petitioner on 31.12.1992 by Registered post with Acknowledgement due. Accordingly, the appeal was dismissed. This writ petition is, therefore, filed.

As the learned Counsel for the petitioner strenuously contended that notice was not issued to the petitioner at the stage of preparation of draft statement as required under Section 8(3) of the Act, this Court has summoned the file from the Office of the second respondent. The file bearing No.J2/1136/76 would reveal the following facts. The petitioner filed the declaration under Section 6 of the Act on 15.9.1976. The same was referred for enquiry to the Special Deputy

Tahsildar, who issued number of notices to the petitioner. Some of these notices were sent to the petitioner at his address "3-2-801" as furnished by him in column-1 of Para-B of the declaration under Section 6 of the Act. These notices were received by the petitioner but he did not produce documentary evidence. Therefore, on 24.6.1993, the Enquiry Officer submitted a report to the second respondent. Based on the report, the second respondent issued a draft statement on 25.11.1993 and notice under Section 8(3) of the Act calling upon the petitioner to submit objections. As noticed above, the benefit of G.O.Ms.No.733 was given besides allowing 1,000 Sq.mts. towards ceiling area. The said notice was sent by Registered post with Acknowledgement due again to the address of the petitioner as furnished in the declaration. The acknowledgement was signed by one C.Pavularam Yadav on 13.12.1993 and was seen on index page No.79. As objections were not received, second respondent passed final orders on 30.4.1994 determining the petitioner to be surplus vacant landholder to the extent of 20,954.07 Sq.mts.

Learned Counsel for the petitioner, after perusing the file, submits that as the acknowledgement was signed by one C.Pavularam Yadav, no inference can be drawn that notice is duly served on the petitioner. The submission is devoid of any merit and cannot be accepted. Section 8(3) of the Act requires the competent Authority to serve draft statement in such manner as may be prescribed on the person together with the notice calling upon for objection. The term "prescribed" means prescribed by the Rules (see Section 2(j) of the Act). The Central Government has made Urban Land (Ceiling and Regulation) Rules, 1976 (the Rules, for brevity) in exercise of their powers under Section 46 (1) and (2) of the Act. Rule 5(2) of the Rules deals with service of notice and reads as under.

5. Particulars to be contained in draft statement as regards vacant lands and manner of service of the same:-

(2) (a) The draft statement shall be served, together with the notice referred to in sub-section (3) of section 8, on –

- (i) the holder of the vacant lands, and
- (ii) all other persons, so far as may be known, who have, or are likely to have, any claim to, or interest in the ownership, or possession, or both, of the vacant lands, by sending the same by registered post addressed to the person concerned –

- (i) in the case of the holder of the vacant lands, to his address as given in the statement filed in pursuance of sub-section (1) of section 6, and
- (ii) in the case of other person at their last known addresses.

(b) Where the draft statement and the notice are returned as refused by the addressee, the same shall be deemed to have been duly served on such person.

(c) Where the effects to serve the draft statement and the notice, on the holder of the vacant lands or, as the case may be, any other person referred to in (a), in the manner specified in that clause is not successful for reasons other than the reason referred to in clause (b), the draft statement and notice shall be served by affixing copies of the same in a conspicuous place in the office of the competent authority and also upon some conspicuous part of the house (if any) in which holder of the vacant lands or, the case may be, the other person is known to have last resided or carried on business or personally worked for gain.

A plain reading of the above Rules would show that when once the notice is sent by Registered Post to the person/declarant or other person claiming interest or ownership, it would be sufficient compliance with Section 8(3) of the Act. Rule 5(2)(c) of the Rules also speaks of serving the draft statement by affixing copies of the same in a conspicuous place in the Office of the Government authority. Furthermore, under Section 27 of the General Clauses Act, 1897, unless contrary is proved, due service of notice has to be presumed if the said notice is sent by Registered Post by preparing and posting the letter to the address of the person to whom notice is to be sent. In this case, as seen from the file, a number of notices issued by the Enquiry Officer/Special Deputy Tahsildar at the time of the enquiry were sent to the address of the petitioner as furnished in the declaration. The draft statement under Section 8(1) of the act and notice under Section 8(3) of the Act were also sent to the same address by Registered Post with Acknowledgement Due and, therefore, even if the postal acknowledgement is signed by other person, this Court has to infer that there is valid service of notice as prescribed by the Rules, which is the mandate of Section 8(3) of the Act.

The writ petition, for the above reasons, is devoid of any merit and is accordingly dismissed. No costs.

(V.V.S.RAO, J)

October 13, 2006

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